of a third party. *Publishers* v. *Wilks*, 105 Ark. 243, 151 S. W. 280; *Martin* v. *Campbell*, 120 Mass. 126. *Cf. Root* v. *Bancroft*, 8 Gray (Mass.), 619. But misconduct of the plaintiff may cause denial of specific performance where rescission would not be allowed. *Kelly* v. *Central Pacific R. Co.*, 74 Cal. 557, 16 Pac. 386; *Allen* v. *Kirk*, 219 Pa. St. 574, 69 Atl. 50. The mistake of the defendant here was not, however, induced by the plaintiff. The cases of unilateral mistake coupled with hardship upon the defendant show that specific performance may be denied where the plaintiff's only moral obliquity arises after the contract and consists in then ignoring the appeal of the defendant's situation. See 3 WILLISTON, CONTRACTS, §§ 1425, 1427. But the terms of the contract in the principal case were not sufficiently harsh to be within the rule of these cases. *Day* v. *Wells*, 30 Beav. 220. If right, therefore, the case must rest on some additional ground. It may be significant that the plaintiff is seeking to take advantage of a tort. *Cf. Dixon* v. *Olmius*, 1 Cox Eq. 414; *Luttrell* v. *Olmius*, 11 Ves. Jr. 638 (*cit.*). But see *Dye* v. *Parker*, 194 Pac. 640, 195 Pac. 599 (Kans.). The defendant's mistake would be impaired as a defense if caused by his own negligence. *Tamplin* v. *James*, 15 Ch. D. 215. The probability that it was so caused is diminished by the fraud as the moving cause. Also a shade is cast upon the plaintiff's morality, and the weight of both these elements may just turn the balance of discretion, but certainly with no great preponderance.

EVIDENCE — PRIVILEGED COMMUNICATIONS — STATEMENTS TO A PROSECUTING ATTORNEY. — The defendant was convicted of statutory rape. At the trial, for the purpose of impeaching the testimony of the prosecuting witness, he offered in evidence her statements to the county attorney to the effect that the defendant had not assaulted her. This evidence was excluded. *Held*, that the exclusion was erroneous. *entoamore* v. *State*, 181 N. W. 182 (Neb.).

The basis of privilege is confidence. See 4 WIGMORE, EVIDENCE, § 2285. There is a social interest that clients receive confidential advice from their attorneys without the menace of revelation upon the stand. See 1 TAYLOR, EVIDENCE, 11 ed., § 911. See Brougham, L. C., in *Greenough* v. *Gaskell*, 1 Myl. & K. 98, 103. There is a social interest in an administration of criminal law unembarrassed by the possibility that citizens, who pursuant to duty and in good faith inform the prosecuting attorney of crime, will be held liable for their accusations. *Gabriel* v. *McMullin*, 127 Ia. 426, 103 N. W. 355; *Vogel* v. *Gruaz*, 110 U. S. 311. See 4 WIGMORE, EVIDENCE, § 2374; NEWELL, SLANDER AND LIBEL, 3 ed., §§ 596–597. In both cases, to foster confidence, public policy raises the shield of privilege. But in neither case is the privilege indefeasible. The communications of a client seeking advice for a fraudulent purpose may be exposed in court. See HEGEMAN, PRIVILEGED COMMUNICATIONS, §§ 77–81; 1 TAYLOR, EVIDENCE, 11 ed., § 912. Information given by a citizen to a prosecuting officer in furtherance of a conspiracy to commit an indictable offence is subject to disclosure. *State* v. *Wilcox*, 90 Kan. 80, 132 Pac. 982. A balance of interests determines the decision of such cases. Lord Esher well said that when two public policies conflict, the one which says that the innocent man shall not be condemned when his innocence can be proved must prevail. See *Marks* v. *Beyfus*, 25 Q. B. D. 494, 498. In the principal case the evidence excluded was material to the proof of innocence. In such instance — especially where no liability devolves upon the informant by admitting the evidence — the privilege must give way. See *Riggins* v. *State*, 125 Md. 165, 93 Atl. 437, *accord*.

EVIDENCE — *RES GESTA* — STATEMENTS OF BYSTANDER. — In a trial for murder, the defendant pleaded self-defense. A witness for the defendant testi-

fied that during the struggle between the defendant and the deceased a bystander said to him, "Joe, he's going to cut him to pieces, ain't he?" This evidence was excluded. *Held*, that the exclusion was erroneous. *State* v. *Carraway*, 107 S. E. 142 (N. C.).

Words used testimonially derive their value from the credit of the person testifying. If the speaker is not on the stand with his credibility subject to the test of cross-examination, his words must be excluded as hearsay, unless, indeed, his credit may be otherwise vouched for. See *S. W. School Dist.* v. *Williams*, 48 Conn. 504; *Hately* v. *Kiser*, 253 Ill. 288, 97 N. E. 651; *United States* v. *Macomb*, 5 McLean (U. S.), 286 (Circ. Ct., Ill.). See 2 WIGMORE, EVIDENCE, § 1420. Utterances made under the stimulus of an exciting event, in reference to that event, are the automatic and ingenuous turning of perceptions into words. *State* v. *Hudspeth*, 159 Mo. 178, 60 S. W. 136; *Eby* v. *Travelers Ins. Co.*, 258 Pa. St. 525, 102 Atl. 209. See MCKELVY, EVIDENCE, § 208. The occasion of the utterance guarantees as to that utterance the credit of the speaker, and it is immaterial whether he be a principal in the event or a bystander. *State* v. *Walker*, 78 Mo. 380; *Britton* v. *Wash. Water Power Co.*, 59 Wash. 440, 110 Pac. 20. See 3 WIGMORE, EVIDENCE, § 1755. Upon that basis the statement in the principal case was correctly received. It may be urged that in these cases of "contemporaneous exclamatory narration" the excitement is likely to blur the perceptive faculties and so render the evidence unreliable. But would not this equally apply were the declarant to testify in person? The weight of authority is with the principal case. See 3 WIGMORE, EVIDENCE, § 1755. The decisions *contra* usually lose themselves in a discussion, where there should be analysis, of the *res gesta* doctrines. *Flynn* v. *State*, 43 Ark. 289; *Louisville Ry.* v. *Johnson*, 131 Ky. 277, 115 S. W. 207; *State* v. *Howard*, 120 La. 311, 45 So. 260.

INTERNATIONAL LAW — NATIONALITY — CONDITION OF STATELESSNESS. — The plaintiff was born in Prussia. Becoming of age, he obtained his release from Prussian nationality, and made his home in England. He did not become a naturalized British subject. After twenty years' domicil in England he was interned, and, in 1918, deported. After the war, the property of "German nationals" situate within the territories of the British Crown became subject to certain charges (TREATY OF VERSAILLES, Part X, § iv, Annex, clause 4). The plaintiff sues the Public Trustee and the Attorney-General for a declaration that he was not a German national within the meaning of the Treaty. *Held*, that the declaration be granted. *Stoeck* v. *Public Trustee*, [1921] 2 Ch. 67.

On principles of international law, the municipal law of each state will be followed in deciding whether a particular individual is its national or not. See 3 MOORE, DIGEST OF INTERNATIONAL LAW, § 372; HERSHEY, ESSENTIALS OF INTERNATIONAL PUBLIC LAW, § 223. See also Theodore H. Thiesing, "Dual Allegiance in the German Law of Nationality and American Citizenship," 27 YALE L. J. 479, 482. The court, therefore, properly looked into the state of German law. By that law, the plaintiff had lost his German nationality. See BUNDES-GESETZBLATT DES NORDDEUTSCHEN BUNDES, No. 20, *vom* 1 Juni, 1870, §§ 14 *et seq.* (For translation, see CITIZENSHIP OF THE UNITED STATES, EXPATRIATION AND PROTECTION ABROAD, 59th Cong., 2d Sess., H. Doc. No. 326, pp. 329–330). Having become a subject of no other sovereign, the plaintiff was a stateless person. Such a condition is recognized by writers on international law. See HALL, INTERNATIONAL LAW, 7 ed., § 74; 1 OPPENHEIM, INTERNATIONAL LAW, 2 ed., §§ 311–312; BORCHARD, DIPLOMATIC PROTECTION OF CITIZENS ABROAD, § 262. But see MORSE, CITIZENSHIP, § 129. The principal case, however, seems to be the first actual decision of a common-law court to accept it. *Cf. Ex Parte Weber*, [1916] 1 K. B. 280 n, [1916] 1 A. C. 421; *Ludlam* v. *Ludlam*, 26 N. Y. 356, 374 *et seq.* But see *Séquestre de Jacob Ull-*